



Entered on Docket
October 31, 2007

Kim Ri

**Hon. Linda B. Riegle
United States Bankruptcy Judge**

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Attorneys for USACM Liquidating Trust

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

USA COMMERCIAL MORTGAGE COMPANY,

USA CAPITAL REALTY ADVISORS, LLC,

USA CAPITAL DIVERSIFIED TRUST
DEED FUND, LLC.

USA CAPITAL FIRST TRUST DEED
FUND, LLC.

USA SECURITIES, LLC,
Debtors.

Case No. BK-S-06-10725-LBR
Case No. BK-S-06-10726-LBR
Case No. BK-S-06-10727-LBR
Case No. BK-S-06-10728-LBR
Case No. BK-S-06-10729-LBR

CHAPTER 11

Jointly Administered Under Case No.
BK-S-06-10725 LBR

Date of Hearing: October 15, 2007
Time of Hearing: 9:30 a.m.

Affects:

- All Debtors
- USA Commercial Mortgage Company
- USA Capital Realty Advisors, LLC
- USA Capital Diversified Trust Deed Fund, LLC
- USA Capital First Trust Deed Fund, LLC
- USA Securities, LLC

1 **ORDER SUSTAINING THE USACM LIQUIDATING TRUST'S OBJECTION TO**
 2 **CLAIM NO(S). 10725-02481 FILED BY TOBIAS VON AUW REVOCABLE**
 3 **TRUST DTD 11/23/04 AS IMPROPERLY ASERTING SECURED STATUS**

4 Tobias Von Auw Revocable Trust dtd 11/23/04 filed Proof of Claim No(s). 10725-
 5 02481, which asserted a secured claim(s) against USA Commercial Mortgage Company
 6 ("USACM").

7 The USACM Liquidating Trust (the "USACM Trust") filed its an Objection [DE
 8 4287] (the "Objection"), which challenged Tobias Von Auw Revocable Trust dtd
 9 11/23/04's assertion of secured status and sought to have the Court reclassify Tobias Von
 10 Auw Revocable Trust dtd 11/23/04's claim(s) as a general unsecured claim(s).

11 Simultaneously with the Objection, the USACM Trust filed its Motion for
 12 Summary Judgment Regarding (1) Responses to the USACM Trust's First Through
 13 Thirty-Third Omnibus Objections to Claims Asserting a Secured Status; (2) Responses to
 14 USACM Trust's First through Third Omnibus Objections to Claims Asserting a Priority
 15 Status; and (3) Newly Alleged Secured and Priority Claims (the "Motion") [DE 4291].
 16 The Motion sought summary judgment on the Objection and asked that the Court sustain
 17 the Objection.

18 Appropriate notice of the Objection and the Motion was given to Tobias Von Auw
 19 Revocable Trust dtd 11/23/04.

20 Tobias Von Auw Revocable Trust dtd 11/23/04 did not respond to the Objection or
 21 the Motion.

22 At a hearing on October 15, 2007, the Objection and the Motion came before the
 23 Court. Tobias Von Auw Revocable Trust dtd 11/23/04 did not appear at the hearing to
 24 contest the Objection or the Motion.

25 Based upon the foregoing and good cause appearing,

26 **IT IS HEREBY ORDERED:**

1. Granting the Motion [DE 4291] as it relates to Proof of Claim No(s). 10725-02481 filed by Tobias Von Auw Revocable Trust dtd 11/23/04;
2. Sustaining the Objection [DE 4287]; and
3. Reclassifying Proof of Claim No(s). 10725-02481 filed by Tobias Von Auw Revocable Trust dtd 11/23/04 as a general unsecured claim(s) subject to further objection by the USACM Liquidating Trust.

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PREPARED AND SUBMITTED:

LEWIS AND ROCA LLP

By: /s/ RC (#0006593)
Susan M. Freeman (pro hac vice)
Rob Charles
John Hinderaker (pro hac vice)
Attorneys for USACM Liquidating Trust

1 CERTIFICATION OF COUNSEL PURSUANT TO LOCAL RULE 9021

2 In accordance with Local Rule 9021, the undersigned certifies:

3 The Court waived the requirements of LR 9021.

4 I have delivered a copy of this proposed order to all counsel who appeared at the
5 hearing, any unrepresented parties who appeared at the hearing, and any trustee
6 appointed in this case, and each has approved or disapproved the order, or failed
7 to respond, as indicated below:

8 approved the form of this order;

9 waived the right to review the order;

10 failed to file and serve papers in accordance with LR 9021(c); and/or

11 failed to sign and return this proposed order within five (5) business days
12 in accordance with LR 9021(b).

13 I have delivered a copy of this proposed order to all attorneys and unrepresented
14 parties who appeared at the hearing regarding this matter and/or who filed a
15 written objection and all have either approved the form of this order, waived the
16 right to review the order, failed to file and serve papers in accordance with LR
17 9021(c) and the following have disapproved the form of the order.

18 No opposition was filed and no other party or counsel appeared at the hearing.

19 **LEWIS AND ROCA LLP**

20 By: /s/ RC (#0006593)

21 Susan M. Freeman

22 Rob Charles

23 *Attorneys for USACM Liquidating Trust*

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